

### REMARKS

With this response, claims 10 and 11 are amended. Claim 4 has also been amended in order to correct a typographical error. No new matter is added.

Claims 1-16 of the present application were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 and 12-17 of copending Application No. 10/842,842. Applicant believes that the cited claims of the pending application are patentably distinct; however, in the interest of advancing the application to allowance, Applicant is willing to provide a terminal disclaimer upon an indication of allowability.

Applicant respectfully traverses the rejection of claims 1, 5-7, 10 and 11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0176367 ("Gross") in view of U.S. Publication No. 2002/0163883 ("Price") at page 10 of the Office Action.

The Office Action of December 17, 2005 acknowledges that Gross fails to disclose or suggest a data transmission slowdown indicator comprising a slowdown amount and a probability of experiencing a slowdown event as recited in claims 1, 7, 10 and 11. However, the Office Action alleges that the aforementioned subject matter may be found in paragraphs 0014 – 0017 of Price. See Office Action, pp. 10-11.

Price discloses a system and method for providing call admission control that addresses the problem of congestion. See Price, Abstract. Price discloses a congestion indicator to detect the approach of congestion and to provide an appropriate indicator. See Price, p. 2, paragraphs 0014-0017. Additionally, Price discloses that the congestion indicator can be configured by a user to specify a congestion onset threshold and a congestion abatement threshold. See Price, p. 4, paragraph 0034. Once a reassembly buffer 48 and/or fragmentation buffer 50 of Price fill beyond the set congestion onset threshold, an appropriate bit is asserted in the data packets to prevent any further PV calls from being placed. See Price, p. 4, paragraph 0035.

Price also discloses that the congestion indicator may use a link resource to determine congestion. See Price, p. 4, paragraph 0032. The link resource is the upstream WAN bandwidth that is used for real time variable bit rate (VBR) connections. See Price, p. 4, paragraph 0032.

Price discloses that the aggregate bandwidth by all subscribers over each telecommunication link 16 is measured. See Price, p. 4, paragraph 0036. This total is then compared to the overall bandwidth available over the wide area network 18. See Price, p. 4, paragraph 0036. As subscriber usage increases and approaches the overall bandwidth available over the wide area network 18, the appropriate bit of the data packets being sent via the xDSL interface 40 is asserted in order to prevent any further PV calls from being placed. See Price, p. 4, paragraph 0036. As such, the congestion indicator of Price is initiated upon comparing use by users of the network to availability on the wide area network 18. Price fails to disclose or suggest a data transmission slowdown indicator that includes a slowdown amount and a probability of experiencing a slowdown event, as recited in claims 1 and 7.

Therefore, even if the asserted combination of Price and Gross were made the resulting combination fails to disclose or suggest at least one element of independent claims 1 and 7. As such, the Office Action fails to establish a *prima facie* case of obviousness.

Therefore, Applicant respectfully requests the rejection of claims 1 and 7 be withdrawn. Further, claims 5 and 6 depend from claim 1. Accordingly, Gross and Price fail to disclose each and every element of claims 5 and 6, at least by virtue of their dependence on claim 1. As such, Applicant further requests that the rejection of claims 5 and 6 be withdrawn.

Claims 10 and 11 recite a data transmission slowdown indicator comprising a slowdown amount and a probability of experiencing a slowdown event. As previously discussed, the asserted combination of Gross and Price fails to disclose this feature or the particular combination of the elements of claims 10 and 11. Therefore, Applicant respectfully submits that claims 10 and 11 define over the combination of Gross and Price as previously discussed in relation to claims 1 and 7. Consequently, Applicant requests the rejection of claims 10 and 11 be withdrawn.

Thus, the asserted combination of Gross and Price fails to disclose or suggest at least one element of each of the independent claims 1, 7, 10 and 11, and of the dependent claims 2-6, 8, 9, and 12-16 at least by virtue of their dependency from one of claims 1, 7, 10 or 11. Thus, all of the pending claims are in condition for allowance.

**Conclusion**

Applicant has pointed out specific features of the claims not disclosed, suggested, or rendered obvious by the references applied in the Office Action. Accordingly, Applicant respectfully requests reconsideration and withdrawal of each of the objections and rejections, as well as an indication of the allowability of each of the pending claims.


Any changes to the claims in this amendment, which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

The Examiner is invited to contact the undersigned attorney at the telephone number listed below if such a call would in any way facilitate allowance of this application.

The Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

2-23-2006  
Date

  
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